THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0930, Chalet Susse International, Inc. v. Town of Wilton & a., the court on February 7, 2007, issued the following order:

The petitioner, Chalet Susse International, Inc., appeals an order of the superior court affirming the Town of Wilton Planning Board's (board) denial of its subdivision application. The petitioner argues that: (1) the board could not properly deny the application based upon a wetlands concern that had previously been approved by the Town of Wilton Zoning Board of Adjustment (ZBA) and the New Hampshire Department of Environmental Services; (2) the board wrongly denied approval based upon a vague, undefined concern about wetlands impact; and (3) the board unlawfully based its decision upon a standard never previously applied to similar subdivisions. We affirm.

When a trial court's review of a planning board decision is appealed, we affirm the trial court's decision unless it is unsupported by the evidence or legally erroneous. Cherry v. Town of Hampton Falls, 150 N.H. 720, 723 (2004). The trial court may reverse or affirm, wholly or partly, or may modify the decision brought up for review when there is an error of law, or the court is persuaded by the balance of probabilities, on the evidence before it that said decision is unreasonable. RSA 677:15 (Supp. 2006). The trial court may not substitute its judgment for that of the board. Cherry, 150 N.H. at 724.

The petitioner's subdivision application was subject to section 6.3 of the Wilton Zoning Ordinance, which provided in relevant part: "Any subdivision of a parcel resulting in one or more reduced frontage lots is only permitted upon site plan review and approval by the Planning Board, and upon Planning Board determination that the proposed reduced frontage lot better serves the neighborhood than would a development under the otherwise applicable provisions of this ordinance." The board was therefore required to determine whether the benefit of granting approval was outweighed by the detriment. The April 16, 2004 letter from Normandeau Associates addressed areas of potential impact on the wetlands. This letter supports the board's finding that the benefit of any reduction in curb cuts resulting from the proposed reduced frontage lots did not outweigh the potential harm to the wetlands. That the petitioner may have received other approvals for the subdivision was not dispositive of the issues before the board. See Cherry, 150 N.H. at 725; see also Patenaude v. Town of Meredith, 118 N.H. 616, 620-21 (1978) (whether proposed plan complies with zoning requirements is but one issue to be considered by planning board when reviewing subdivision application).

We disagree with the petitioner's characterization of the board's concern as "vague and undefined." The board's concerns included the secondary effects on the wetlands of home products from residents of the proposed subdivision and the impact of filling in 4,100 square feet for a proposed crossing. The board could have found that these effects outweighed the benefit of the reduction in curb cuts.

The petitioner's final argument is based upon a statement that is not supported by the record. While the petitioner presented testimony from an alternate member of the planning board that she could not recall a case where subdivision approval had been denied based upon Section 6.3 of the Wilton zoning ordinances, this is not the equivalent of establishing that the ordinance had never previously been applied. When asked by petitioner's counsel at trial about allegedly similar subdivisions that had received approval, one of the board's members provided distinctions, including the greater area of wetlands affected by, as opposed to contained in, the petitioner's project. Based upon the record before us, we find no error.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

Eileen Fox,
Clerk